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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re JOEY L. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JOSEFA H.,

Defendant and Appellant.

D049960

(Super. Ct. No. SJ10846A-C)

APPEAL from a judgment of the Superior Court of San Diego County, William E. Lehnhardt, Judge. (Retired judge of the Imperial Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Josefa H. appeals a judgment of the juvenile court terminating her parental rights to her minor children Johnny L., Joel L. and Joey L. (collectively the minors) under

Welfare and Institutions Code section 366.26.¹ Josefa challenges the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(A) did not apply to preclude terminating her parental rights. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2005, seven-year-old Johnny, five-year-old Joel and three-year-old Joey became dependents of the juvenile court and were removed from parental custody based on findings their parents abused drugs and alcohol and had been arrested for drug possession.² During the 18-month reunification period, Josefa participated in services and regularly visited the minors, but she relapsed into drug use, continued to minimize her drug addiction and was unable to properly discipline the minors when she visited them.

Josefa was not attentive to the minors during visits and allowed them to do as they pleased, even after the social worker prompted her to redirect them. She ignored the minors when they fought or cried, requiring the social worker to intervene in order to prevent the minors from hurting themselves. Josefa spent most of her time during visits holding her youngest son Ricky.³ The minors did not hug or kiss Josefa at the beginning or end of visits.

¹ Statutory references are to the Welfare and Institutions Code.

² The minors' father, Juan L., is not a party to this appeal.

³ Ricky is also a dependent of the court, but is not a subject of this appeal.

The minors said they did not miss their mother and did not want to see her. Joey sometimes cried when a visit was scheduled. Josefa knew the minors did not want to visit her because they told her so. Because visits were having a negative effect on the minors, the court temporarily suspended visitation based on a finding of detriment to the minors.

The social worker was concerned that Josefa showed no love or affection for the minors and that she made little effort to develop a bond with them. In the social worker's opinion, the minors did not have a beneficial relationship with Josefa that outweighed the benefits of a permanent and stable home.

The minors were assessed as generally adoptable because of their ages, good health and appropriate development. The paternal aunt and uncle, with whom the minors had lived for the past two years, were committed to adopting them. The minors wanted to remain with these caregivers.

At a section 366.26 selection and implementation hearing, the court found the minors were likely to be adopted and none of the exceptions of section 366.26, subdivision (c)(1) applied to preclude terminating parental rights.

DISCUSSION

A

We review the judgment for substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the

weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order, and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the child under one of six specified exceptions. (§ 366.26, subd. (c)(1)(A)-(F); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.)

Section 366.26, subdivision (c)(1)(A) provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because "[t]he parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We have interpreted the phrase "benefit from continuing the relationship" to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a

substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App. 4th at p. 575; accord, *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent "must show that he or she occupies a 'parental role' in the child's life," resulting in a "significant, positive, emotional attachment" from child to parent. (*Ibid.*; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

B

Although Josefa regularly visited the minors, she did not meet her burden of showing her relationship with the minors was sufficiently beneficial to outweigh the benefits of adoption for them. There was no loving contact or emotional bond between Josefa and the minors, and visits were not particularly pleasant. Josefa was inattentive to the minors during visits and was unable to set limits with them. The minors resisted hugging or kissing Josefa, they did not want to visit her and did not miss her. In essence, there was no evidence of a "significant, positive, emotional attachment" from the minors to Josefa such that terminating the parent-child relationship would result in great detriment to the minors. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Rather, the evidence showed the minors' need for permanence and stability through adoption outweighed any interest in preserving parental ties.

Further, the minors wanted to remain with the paternal aunt and uncle, who were willing and able to provide the minors with a permanent and stable home. Where, as here, the biological parent does not fulfill a parental role, "the child should be given every opportunity to bond with an individual who will assume the role of a parent." (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.) Substantial evidence supports the court's finding the exception of section 366.26, subdivision (c)(1)(A) did not apply to preclude terminating Josefa's parental rights.

DISPOSITION

The judgment is affirmed.

NARES, Acting P.J.

WE CONCUR:

HALLER, J.

O'ROURKE, J.